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PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional)
085804-012201

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name _____Application Number
10/609,183Filed
June 26, 2003First Named Inventor
Christopher F. HarveyArt Unit
2157Examiner
Uzma Alam

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

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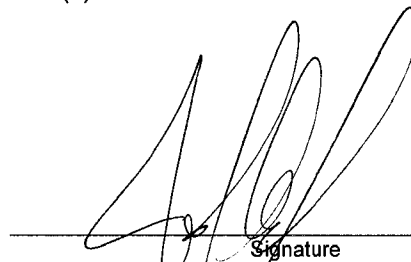
- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

- ☒ attorney or agent of record.

Registration number 36,120

- ☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

James J. DeCarlo

Typed or printed name

212-801-6729

Telephone number

February 13, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- ☒ *Total of -3- forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION No.	10/609,183	Group Art Unit:	2157
Applicant(s):	Christopher F. HARVEY, et al.	Examiner:	Uzma Alam
Filing Date:	June 26, 2003	Docket No.	085804-012201
Title:	SYSTEM AND METHOD FOR COMMUNICATING IMAGES BETWEEN INTERCOMMUNICATING USERS	Customer No.	32361

February 13, 2007

**LETTER SUBMITTING REMARKS WITH
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

This paper is being filed with a Request for Pre-Appeal Brief Review and Notice of Appeal. Applicant seeks formal review by a panel of Examiners of claim rejections raised in a Final Office Action mailed November 15, 2006 (hereinafter referred to as the "Office Action"). Accordingly, appeal of the rejection, and request for Pre-Appeal Brief Review are timely and proper.

More particularly, Applicant requests review of claims 1-16 and 19-27, which currently stand rejected under 35 U.S.C. § 103 based on U.S. Patent No. 6,677,976 (hereinafter referred to as "Parker") in view U.S. Patent No. 6,545,697 (hereinafter referred to as "Werner"). Remarks herein supplement Applicants' remarks of record in the instant case.

Turning first to the rejection of independent claim 1, and the claims depending therefrom, the Examiner contends that Parker allegedly teaches all of the limitations of claim 1 (a point in

no way conceded) except that “Parker does not teach at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user”. The Examiner goes on to contend that Werner teaches “at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user.” The Examiner cites to column 5, lines 64-67 and column 6, lines 1-4 of Werner as allegedly supplying the teaching of the above-referenced claim limitation admittedly absent from Parker. It is respectfully submitted that Werner in no way provides such teaching or suggestion.

The limitation at issue in claim 1 reads as follows:

the image being communicated at a frame rate and at an image quality, at least one of said frame rate and said image quality being based upon conditions of a communication path between said first user and said second user.

In stark contrast to the limitation cited above, the entire portion of Werner relied upon by the Examiner as allegedly corresponding to the claim limitation above reads as follows:

The video call request includes the called telephone number and other information, such as the caller user name and password, caller telephone number and data address, and video call parameters. The video call parameters indicate if the requested video call is bi-directional or unidirectional, and the direction if unidirectional - caller to caller party or called party to caller. The video call parameters may also indicate requested video quality and security. The information in the video call request is populated by control system 304 and/or data communication system 302.

It is respectfully submitted that the above cited passage of Werner relied upon by the Examiner is an inadequate teaching or suggestion of the subject claim limitation. Specifically, the Werner reference, both in the cited passage and in the references as a whole, makes no reference to adjusting the frame rate at which an image is communicated, or the image quality with which an image is communicated, based upon conditions of a communication path between system users. To the extent there is any mention of “video quality,” a term that is not further

defined in Werner, it is described as part of a user selectable option available through a user interface. Specifically, at column 8, lines 5-33, Werner describes that:

operating software 716 directs processing system to retrieve an executed video software 717 in response to computer start-up or user input. Video software 717 directs processing system 713 to operate as follows. Processing system 713 maintains a set of user options that can be viewed and altered through user interface 711 a table of possible options follows.

Among the possible “options” referred to in the above-cited Werner passage is “video quality”. Thus the extent “video quality” is discussed at all, it is certainly not discussed in the context of a frame rate or image quality, and certainly not based upon conditions of a communication path between a first user and a second user, but rather based upon a set of user selectable options that may be selected through a custom user interface.

Thus, it is respectfully submitted that the Werner reference does not and cannot in any way teach the above noted claim limitation of communicating images at a frame rate and an image quality, at least of which is based upon conditions of a communication path between users. The Werner reference is completely devoid of any teaching or suggestion of such a limitation. The mere fact that Werner discusses undefined “video quality” that a user may select through a user interface can in no way be deemed to teach or suggest adjusting frame rate or image quality based on communication path conditions between system users. It is respectfully requested, for the reasons set forth above, that this panel reconsider the present rejection and allow claim 1 to pass to allowance.

With respect to independent claims 9 and 19, these claims contain the same limitation, and therefore the arguments with respect to claim 1 above are similarly relevant and thus, for the same reasons, the §103 rejection of claims 9 and 19, and those claims depending therefrom, should be withdrawn for the same reasons.

With respect to claim 27, claim 27 recites the limitations of:

passing a first image of the series of images from the broadcaster computer to the first viewer computer; and

detecting whether an indication from the first viewer computer as to whether the first image has been received; and

passing a second image of the series of images if the first image has been received.

The Examiner relies solely on Parker to reject claim 27, relying on passages of Parker beginning at column 5, lines 1-15; column 6, lines 4-11; and column 8, lines 53-65. It is respectfully submitted that these passages in Parker, as well as any other passage in Parker, do not in any way teach the claimed limitations. Specifically, the passages in Parker describe the initial steps of video call setup where a first user attempts to contact the second user and where, if the second user refuses to accept the connection no such connection is made. The cited passages in no way describes the claimed limitations of passing a series of images from a broadcaster computer to a first computer by passing a first image to the first viewer computer and not passing the second image of the series of image if the first image has not been received at the first viewer computer. Nothing in Parker teaches, describes or suggests such a method of communicating a series of images from a broadcast computer. Indeed the only passage cited by the Examiner that the undersigned can interpret as describing transferring images is in Parker at column 5, lines 11-14 which reads:

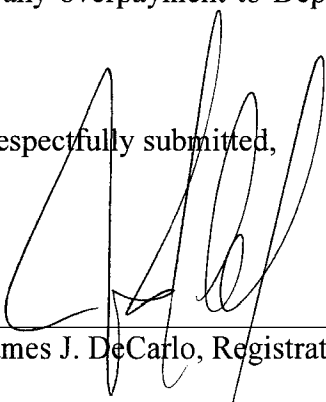
The application programs can be written to perform file transfers of various types of files, video data or frames for video telephony, or other real-time data or control signals. Data exchange can continue until either user deactivates their application program.

Thus, to the extent Parker in any way discusses video frames it is only in a most cursory fashion and in no way describes passing a series of images from a broadcaster computer to a viewer computer by passing a first image of the series of images from a broadcast computer and refraining from passing a second image until an indication is received from the first viewer

computer that the first image has been received. Thus, it is respectfully requested that this panel review and reconsider the rejection to independent claim 27 based on Parker, since Parker in no way teaches, describes or suggests the claim limitations of claim 27 as alleged by the Examiner.

Thus, for at least the reasons presented herein and in Applicants' remarks of record in the instant case, Applicant respectfully submits that withdrawal of the rejections based on the Parker and Werner references as described herein is appropriate, and allowance is respectfully urged. Although no fees are considered due at this, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-1561.

Respectfully submitted,


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Date: February 13, 2007

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